

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 45321)
AND 45322 FILED TO APPROPRIATE WATER)
FROM EIGHT MILE SPRING AND TWO MILE)
SPRING LOCATED IN QUINN RIVER VALLEY)
(McDERMITT SUB-AREA), HUMBOLDT)
COUNTY, STATE OF NEVADA.)

RULING

GENERAL

I.

Application 45321 was filed on February 10, 1982, by Nevada First Corporation to appropriate 0.0156 c.f.s. of water from Eight Mile Spring for stockwatering of 500 head of cattle within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T.46N., R.39E., M.D.B.&M.; NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 23, SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T.46N., R.38E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T.46N., R.39E., M.D.B.&M.¹

Application 45322 was filed on February 10, 1982, by Nevada First Corporation to appropriate 0.0156 c.f.s. of water from Two Mile Spring for stockwatering of 500 head of cattle within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T.46N., R.39E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 17, T.46N., R.39E., M.D.B.&M.¹

II.

Application 45321 was timely protested on June 18, 1982, by the Bureau of Land Management, Winnemucca District, on the following grounds:

The subject spring, known as Eight Mile Spring has a pipeline constructed on it which is a BLM project (#4152), completed in 1971 at a cost of \$4400 of public funds. The water from this spring is necessary for the function of this improvement.

This water is required for multiple use management of the public land and the source is a public water reserve which was

¹ Public record in the Office of the State Engineer filed under Application 45321 and 45322.

reserved for public use under the authority of Executive Order 107 on April 17, 1926 and as identified in 43 CFR 2311. The water is, therefore, not available for appropriation under Nevada State Law.

Presently the applicant Nevada First Corporation is not the livestock user in the area known as the U.C. Allotment. The applicant has leased the grazing privileges to John Falen.

At this time use by cattle is permitted by BLM from March 16 to June 30 and September 16 to November 30. The water right application is for year-round use. It is highly unlikely that good range management practices will ever allow a year-round grazing license in this allotment.

All grazing licenses are subject to adjustment or cancellation should it be necessary for good cause, thus the water rights must not be granted to a person or persons who may or may not have the privilege and grazing license in the future. The water will be available for public use including licensed livestock use in the future. To grant this party application to appropriate these waters would only serve to complicate management of the public lands for no good reason and with no advantage to the applicant as far as grazing and water use at this location.

Therefore the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.¹

III.

Application 45322 was timely protested on June 18, 1982, by the Bureau of Land Management, Winnemucca District, on the following grounds:

The subject spring, known as Two Mile Spring and associated pipeline is a BLM project (#249), completed in 1982 at a cost of \$7533 of public funds. The applicant or his predecessor has entered into a cooperative agreement with BLM on this

project. By this action, the title of the improvement rests with the United States.

The water is required for multiple use management of the public land and the source is a public water reserve which was reserved for public use under the authority of Executive Order 106 on April 17, 1926 and as identified in 43 CFR 2311. The water is, therefore, not available for appropriation under Nevada State Law.

Presently the applicant Nevada First Corporation is not the livestock user in the area known as the U.C. Allotment. The applicant has leased the grazing privileges to John Falen.

At this time use by cattle is permitted by BLM from March 16 to June 30 and September 16 to November 30. The water right application is for year-round use. It is highly unlikely that good range management practices will ever allow a year-round grazing license in this allotment.

All grazing licenses are subject to adjustment or cancellation should it be necessary for good cause, thus the water rights must not be granted to a person or persons who may or may not have the privilege and grazing license in the future. The water will be available for public use including licensed livestock use in the future. To grant this party application to appropriate these waters would only serve to complicate management of the public lands for no good reason and with no advantage to the applicant as far as grazing and water use at this location.

Therefore the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.¹

FINDINGS

I.

By letter, dated December 20, 1989, this office requested the names of the permittee and current range user within which the point of diversion and place of use of Applications 45321 and 45322 are located.¹

II.

By letter, dated March 13, 1990, the United States Department of the Interior, Bureau of Land Management, stated that "the permittee and current range user for Applications 45321 and 45322 is John Falen." "The base property," is leased "from Circle A Ranches."¹

III.

The applicant under Applications 45321 and 45322 does not own or control the land described under the point of diversion and place of use of the applications.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.²

II.

Applications 45321 and 45322 were filed for stockwatering purposes on lands which the applicant is not the permittee or current range user. Therefore, the applicant cannot demonstrate the ability to place the water to beneficial use.

III.

To grant applications to appropriate the public waters for stockwatering on public lands for which the applicant is not the grazing permittee or the current range user or

² NRS Chapters 533 and 534.

where the applicant cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

RULING

I.

No ruling is made on the grounds of the Bureau of Land Management protests filed on June 18, 1982.

II.

Applications 45321 and 45322 are herewith denied on the grounds that to grant applications for stockwatering purposes on public lands that the applicant is not the permittee or current range user and cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

Respectfully submitted,


R. MICHAEL TURNIPSEED
State Engineer

RMT/SW/bk

Dated this 19th day of
September, 1990.